

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Qwest Corporation (Nebraska))	
)	
Petition for Waiver of Section 54.313 of the Commission's Rules)	
)	
Qwest Corporation (South Dakota))	CC Docket No. 96-45
)	
Petition for Waiver of Section 54.313 of the Commission's Rules)	
)	
ALLTEL Nebraska, Inc.)	
)	
Petition for Waiver of Section 54.313 of the Commission's Rules)	
)	

ORDER

Adopted: November 29, 2005

Released: November 29, 2005

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant requests from Qwest Corporation (Qwest-Nebraska and Qwest-South Dakota) and Alltel Nebraska, Inc. (ALLTEL) (collectively, the Petitioners) for waiver of the certification deadlines as set forth in section 54.313 of the Commission's rules.¹ This waiver will allow the Petitioners to receive universal service support for the first and second quarters of 2004.

II. BACKGROUND

2. Section 254(e) of the Communications Act of 1934, as amended (the Act), provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."² Once a carrier is designated as an eligible

¹ Qwest Corporation, Petition for Waiver of Section 54.313 of the Commission's Rules, CC Docket No. 96-45, filed Mar. 23, 2004 (Qwest-Nebraska Petition); Qwest Corporation, Petition for Waiver of Section 54.313 of the Commission's Rules, CC Docket No. 96-45, filed Mar. 29, 2004 (Qwest-South Dakota Petition); ALLTEL Nebraska, Inc., Petition for Waiver of Section 54.313 of the Commission's Rules, CC Docket No. 96-45, filed Mar. 23, 2004 (ALLTEL Petition). See 47 C.F.R. § 54.313. We note that the ALLTEL Petition's caption incorrectly requests a waiver of section 54.314 of the Commission's rules.

² 47 U.S.C. § 254(e). Section 214(e) of the 1996 Act provides that state commissions shall designate carriers as ETCs. 47 U.S.C. § 214(e).

telecommunications carrier (ETC), other requirements must be satisfied before it can begin receiving high-cost universal service support. One of these requirements is detailed in Section 254(e), which requires that support shall be used “only for the provision, maintenance, and upgrading of facilities and services for which support is intended.”³ To implement this statutory requirement, the Commission adopted an annual certification requirement.

3. Section 54.313 of the Commission’s rules provides that states desiring non-rural ETCs to receive universal service high-cost support shall file an annual certification with the Universal Service Administrative Company (USAC) and the Commission stating that all high-cost support received by such carriers within that state will be used “only for the provision, maintenance, and upgrading of facilities and services for which support is intended.”⁴ In instances where carriers are not subject to the jurisdiction of a state, the Commission allows an ETC to certify directly to the Commission and USAC that federal high-cost support will be used in a manner consistent with section 254(e).⁵ Section 54.313(d)(3)(i) provides that the certification must be filed by October 1 of the preceding calendar year to receive support beginning in the first quarter of a subsequent calendar year.⁶ If the October 1 deadline for the first fiscal quarter support is missed, the certification must be filed by January 1 for support to begin in the second quarter, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter.⁷ The Commission established this schedule to allow USAC sufficient time to process section 254(e) certifications and calculate estimated high-cost demand amounts for submission to the Commission.⁸

4. High-cost universal service support for non-rural ETCs is based on forward-looking economic costs as calculated by the Commission’s cost model pursuant to section 54.309 of the Commission’s rules.⁹ The non-rural support mechanism determines the amount of support to be provided to non-rural carriers by comparing statewide average forward-looking cost per line to a nationwide cost

³ 47 U.S.C. § 254(e).

⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11317, para. 187 (2001) (*Rural Task Force Order*); 47 C.F.R. § 47 C.F.R. § 54.313. The certification requirements for rural ETCs are found in section 54.314 of the Commission’s rules. 47 C.F.R. § 54.314.

⁵ See *Rural Task Force Order*, 16 FCC Rcd at 11318, para. 189; 47 C.F.R. § 54.313(b). For example, some states do not assert jurisdiction over carriers providing services on tribal lands. See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order*, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 15 FCC Rcd 12208, 12255, para. 95 (2000).

⁶ 47 C.F.R. § 54.313(d)(3)(i).

⁷ See 47 C.F.R. § 54.313(d)(ii)-(iv). Section 54.314(d) sets out similar self-certification rules for rural carriers. 47 C.F.R. § 54.314(d).

⁸ See *Rural Task Force Order*, 16 FCC Rcd at 11319, para. 191. Under the Commission’s rules, USAC submits to the Commission estimated demand for the universal service support mechanisms, including high-cost support, two months prior to the beginning of each quarter. See 47 C.F.R. § 54.709(a)(3). Therefore, for the first quarter, USAC submits estimated demand amounts to the FCC on or before November 1. In order to submit an accurate estimate by that date, USAC needs to know which carriers have been certified under the Commission’s rules no later than October 1.

⁹ See 47 C.F.R. § 54.309.

benchmark.¹⁰ In 2003, non-rural carriers in only eight states were eligible for non-rural high-cost support.¹¹ On October 23, 2003, the Commission released an *Order on Remand* that adopted a modified cost benchmark, among other things.¹² On December 24, 2003, the Commission issued a *Public Notice* providing a state-by-state estimate of non-rural high-cost support for 2004.¹³ As a result of the new cost benchmark, non-rural carriers in two additional states, Nebraska and South Dakota, were eligible to receive non-rural high-cost support beginning in 2004.¹⁴

5. *Qwest-Nebraska's Petition for Waiver of Section 54.313*. The December 24, 2003 Public Notice indicated that non-rural carriers in Nebraska would be eligible to receive approximately \$8 million in high-cost support for 2004.¹⁵ The Nebraska Public Service Commission (PSC) submitted the required certification with the Commission on March 16, 2004.¹⁶ Qwest, a non-rural incumbent LEC in Nebraska, filed a petition for a waiver of section 54.313 on March 23, 2004.¹⁷ Qwest-Nebraska argues that non-rural carriers in Nebraska became eligible, for the first time, to receive high-cost support after the October 1, 2003 certification filing deadline had passed.¹⁸ Qwest-Nebraska requests a waiver of the certification deadlines in section 54.313 so that it will be eligible to receive high-cost support in Nebraska for the first and second quarters of 2004.¹⁹

6. *Qwest-South Dakota's Petition for Waiver of Section 54.313*. The December 24, 2003 Public Notice indicated that non-rural carriers in South Dakota would be eligible to receive approximately \$2 million in high-cost support for 2004.²⁰ The South Dakota Public Utility Commission (PUC) submitted the required certification with the Commission on March 25, 2004.²¹ Qwest, a non-rural incumbent LEC in South Dakota, filed a petition for a waiver of section 54.313 on March 29, 2004. Qwest-South Dakota argues that non-rural carriers in South Dakota became eligible, for the first time, to

¹⁰ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999) (*Ninth Report and Order*), remanded, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2003) (*Qwest I*).

¹¹ Alabama, Maine, Mississippi, Montana, Vermont, West Virginia, and Wyoming received non-rural high-cost support in 2003. See State and Federal Staff for the Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Universal Service Monitoring Report*, CC Docket No. 98-202 at 3-21, Table 3.8(2004).

¹² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559 (2003) (*Order on Remand*), remanded, *Qwest Corp. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) (*Qwest II*).

¹³ *Wireline Competition Bureau Releases Estimated State-by-State High-Cost Universal Service Support Amounts for Non-Rural Carriers for 2004*, CC Docket No. 96-45, Public Notice, DA 03-4071 (released Dec. 24, 2003).

¹⁴ *Id.*

¹⁵ See Public Notice Attachment.

¹⁶ See Letter from Gerald L. Vap, Chair, Nebraska Public Service Commission to Ms. Magalie Roman Salas, Office of the Secretary, Federal Communications Commission (Mar. 16, 2004) (Nebraska Certification Letter).

¹⁷ See Qwest-Nebraska Petition. On May 20, 2004, the Wireline Competition Bureau (Bureau) released a public notice seeking comment on the petition for waiver. See *Wireline Competition Bureau Seeks Comment on Qwest's Corporation's Petition for Waiver of Section 54.313 of the Commission's Rules*, CC Docket No. 96-45, Public Notice, 19 FCC Rcd 8985 (2004). No comments were filed.

¹⁸ See Qwest-Nebraska Petition at 3.

¹⁹ See Qwest-Nebraska Petition at 3.

²⁰ See Public Notice Attachment.

²¹ See Letter from Robert K. Sahr, Chairman, South Dakota Public Utility Commission to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission (Mar. 25, 2004).

receive high-cost support after the October 1, 2003 certification filing deadline had passed.²² Qwest-South Dakota requests a waiver of the certification deadlines in section 54.313 so that it will be eligible to receive high-cost support in South Dakota for the first and second quarters of 2004.²³

7. ALLTEL's Petition for Waiver of Section 54.313. The December 24, 2003 Public Notice indicated that non-rural carriers in Nebraska would be eligible to receive approximately \$8 million in high-cost support for 2004.²⁴ The Nebraska PSC certified ALLTEL on March 16, 2003.²⁵ ALLTEL, a non-rural incumbent LEC in Nebraska, filed a petition for a waiver of section 54.313 on March 23, 2004. ALLTEL argues that non-rural carriers in Nebraska became eligible, for the first time, to receive high-cost support after the October 1, 2003 certification filing deadline had passed.²⁶ ALLTEL requests a waiver of the certification deadlines in section 54.313 so that it will be eligible to receive high-cost support in Nebraska for the first and second quarters of 2004.²⁷

8. Standards for Waiver. Generally, the Commission's rules may be waived for good cause shown.²⁸ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³⁰ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.³¹ Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.³²

III. DISCUSSION

9. We find that good cause exists to waive the certification deadlines in section 54.313 of the Commission rules in order to allow the Petitioners to receive high-cost universal service support for the first and second quarters of 2004.³³ The Petitioners have demonstrated that special circumstances warrant a deviation from the filing deadlines in section 54.313. The certification filing schedule set out in the Commission's rules was adopted to ensure that USAC has sufficient time to process the certifications prior to its submission of estimated support requirements to the Commission. Because the Petitioners and their respective state commissions were not aware of their eligibility for non-rural high-cost support prior to October 1, 2003, however, they could not have met, under any circumstances, the October 1, 2003 certification filing deadline and given the Commission's release of the *Public Notice* on December 24, 2003, it was effectively impossible for the Nebraska PSC and South Dakota PUC to meet the January 1, 2004 certification deadline. It would be onerous, therefore, to deny the Petitioners receipt of universal

²² See Qwest-South Dakota Petition at 3.

²³ See Qwest-South Dakota Petition at 3.

²⁴ See *Public Notice* Attachment.

²⁵ See Nebraska Certification Letter.

²⁶ See ALLTEL Petition at 2-3.

²⁷ See ALLTEL Petition at 3.

²⁸ 47 C.F.R. § 1.3.

²⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

³⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

³¹ *Northeast Cellular*, 897 F.2d at 1166.

³² *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

³³ See 47 C.F.R. § 54.313(d)(3)(i)-(ii).

service support for two quarters because the Commission did not determine they were eligible until after the filing deadlines. In these instances, these special circumstances outweigh any processing difficulties that USAC may face as a result of the late-filed certification.³⁴

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of section 54.313 of the Commission's rules, filed by Qwest Corporation (Nebraska) on March 23, 2004, IS GRANTED, as described herein.

11. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of section 54.313 of the Commission's rules, filed by Qwest Corporation (South Dakota) on March 29, 2004, IS GRANTED, as described herein.

12. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of section 54.313 of the Commission's rules, filed by ALLTEL Nebraska, Inc. on March 23, 2004, IS GRANTED, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief
Wireline Competition Bureau

³⁴ To facilitate timely payments and to minimize the administrative and financial burden associated with processing those payments, we direct USAC to distribute Qwest's and ALLTEL's retroactive support on a phased-in basis. Specifically, we instruct USAC to pair retroactive payments with regular monthly support payments over a six-month period beginning with the December 2005 payment.